

1 Honorable Thomas R. Zilly
2
3
4
5
6

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 J.E.F.M., a minor, by and through his Next
11 Friend, Bob Ekblad, et al.,

12 Plaintiffs-Petitioners,

13 v.

14 Loretta Lynch, Attorney General, United
15 States, et al.,

16 Defendants-Respondents.

17 No. 2:14-cv-01026

18 DEFENDANTS' NOTICE OF
19 PROPOSED ACTION BY THE
20 DEPARTMENT OF HEALTH AND
21 HUMAN SERVICES CONCERNING
22 NEW FUNDING FOR
23 REPRESENTATION OF
24 UNACCOMPANIED ALIEN
25 CHILDREN

26 Defendants hereby notify the Court of significant impending action that substantially supports Defendants' pending motions to certify an interlocutory appeal and to stay these proceedings pending the outcome of that appeal. *See ECF 132, 133.*

On June 15, 2015, the Department of Health and Human Services (HHS), which is statutorily responsible for the care and placement of unaccompanied alien children (UACs) in the United States, determined that funding is available in its remaining FY 2015 budget to issue Requests for Proposals (RFP) for contracts to provide legal services and direct representation to unaccompanied alien children. *See HHS, Solicitation for Legal Services Providers, available at*

1 https://www.fbo.gov/spg/HHS/PSC/DAM/RFP15-233-SOL-00264/listing.html (last accessed
2 June 15, 2015); Solicitation, RFP 15-233-SOL-00264 (“Solicitation”) at 5-10, *available at*
3 https://www.fbo.gov/utils/view?id=0e6942f920180ae358addb0a7cb4bcfb (last accessed June
4 15, 2015).¹ The RFP seeks multiple regionally-based vendors to provide all legal services to
5 UACs, utilizing a five-year option contract starting August 15, 2015. *Id.* at 7-12, 27. Per the
6 solicitation, the contractor selected shall provide, among other things: (1) “Pro Bono legal
7 representation to the great extent practicable;” (2) “Direct representation to the greatest extent
8 practicable;” (3) “Screenings for legal relief and for human trafficking concerns;” (4) “Friends
9 of the court services where applicable and allowed under local immigration court rules;” and (5)
10 “Know Your Rights (KYR) presentations.” *Id.* at 6. The services are to be provided within a
11 100 mile radius of 23 geographic regions with UAC populations, including Seattle, WA. *Id.* at
12 7-8.

13 A second RFP seeks a contractor to provide child advocate services to UACs in nine
14 specific jurisdictions. *See* Office of Refugee Resettlement, Solicitation, *available at*
15 https://www.fbo.gov/index?s=opportunity&mode=form&id=ec51c3901da3286aaaf331fc50bd6
16 bf2&tab=core&_cview=0 (last accessed June 15, 2015); Child Advocate Solicitation,
17 https://www.fbo.gov/utils/view?id=ea50323f0340e34fc63215955d2519d2 (last accessed June
18 15, 2015). Specifically, the RFP seeks to establish a program where an “assigned child advocate
19 spends time with the child and develops a relationship of trust with the child.” Child Advocate

20 ¹ Defendants formally request that the Court take judicial notice of both RFPs. The documents
21 are formalized, public government documents reflecting an official request for bids on the
22 provision of legal services. This is a quintessentially judicially noticeable document, as it is a
23 verifiable adjudicative fact. *See, e.g., Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99
24 (9th Cir. 2010) (“It is appropriate to take judicial notice of this information, as it was made
25 publicly available by government entities . . . , and neither party disputes the authenticity of the
web sites or the accuracy of the information displayed therein”); *County of Santa Clara v. Astra
USA, Inc.*, 401 F. Supp. 2d 1022, 1024 (N.D. Cal. 2005) (taking judicial notice of information
posted on a Department of Health and Human Services web site).

1 Solicitation at 3. Duties will include: (1) “to develop a service plan with the shelter facility staff
2 and child's attorney,” (2) “visit the child regularly,” (3) “explain communication limitations and
3 confidentiality to the child,” and (4) “obtain background information on the child, including
4 information concerning the child's departure from his or her country of origin, the child's
5 journey to the United States, the child's arrival in the United States, the period between
6 apprehension and transfer to HHS custody, and time in the United States before apprehension, if
7 any.” *Id.* In addition, child advocates will “help[s] the child process information and explain[]
8 the consequences of decisions,” assist “the child to make decisions in situations in which the
9 child requests help,” and assist children unable to make decisions on their own due to cognitive
or other reasons pursue their best interest. *Id.*

10 These developments further demonstrate why a stay would neither harm any of the
11 named Plaintiffs nor the larger general population of unaccompanied alien children in the
12 United States with pending removal proceedings. Not only are none of the named Plaintiffs
13 likely to face constitutional (or any other) harm during the period of the requested stay,² *see*
14 ECF 154, Ex. A, but in light of HHS's proposal, many more unaccompanied alien children will
15 be receiving legal assistance during the removal process. Because the Government's
16 interlocutory appeal--assuming this Court permits it and the Ninth Circuit Court of Appeals
17 agrees to hear it--will be fully briefed by the parties during the period when these funds will be
18 expended to provide legal assistance, the best course of action is to certify and stay this
19

20 ² As argued in Defendant's opposition to Plaintiff's motion seeking leave to file a surreply of the
21 six remaining Named Plaintiffs: (a) three have administratively closed proceedings and have
22 already received asylum status; (b) one has been granted Special Immigrant Juvenile Status; (c)
23 one has obtained an attorney and is not scheduled for a merits hearing until after his eighteenth
24 birthday; and (d) one was granted a continuance for more than a year (which could likely be
25 longer than the requested stay period) in order to have sufficient time to file a non-adversarial
asylum application with USCIS, just as the other Plaintiffs have successfully done. ECF 158 at
1-2. In short, Plaintiffs cannot show that any of the Named Plaintiffs are likely to face a merits
removal hearing (much less be ordered removed) while unrepresented and under age during the
period of the requested stay. *Id.* at 3.

1 litigation to ensure that this matter is properly within this Court's jurisdiction before proceeding
2 any further with what could be unnecessary resource-intensive and substantially burdensome
3 litigation.

4 DATED: June 17, 2015

5 Respectfully Submitted,

6 BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

7 LEON FRESCO
8 Deputy Assistant Attorney General

9 WILLIAM C. PEACHEY
10 Director, District Court Section
Office of Immigration Litigation

11 WILLIAM C. SILVIS
12 Assistant Director

13 SARAH WILSON
14 Trial Attorney

15 /s/ Erez Reuveni
16 EREZ R. REUVENI
Senior Litigation Counsel
U.S. Department of Justice
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Tel.: (202) 307-4293
Fax: (202) 305-7000
E-mail: erez.r.reuveni@usdoj.gov

1
2 **CERTIFICATE OF SERVICE**
3
4

5
6 I HEREBY CERTIFY that on this June 17, 2015, I electronically filed the foregoing
7 with the Clerk of the Court using the CM/ECF system, which will send notification of such
8 filing to all parties of record.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

10 s/ Erez R. Reuveni
11 EREZ R. REUVENI
12 Senior Litigation Counsel
13
14
15
16
17
18
19
20
21
22
23
24
25
26